

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER

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DATE

December 17, 2008

MOTOR CARRIER MATTER

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DOCKET NO.

2007-228-G

UTILITIES MATTER

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ORDER NO.

SUBJECT:

DOCKET NO. 2007-228-G - Petition of the Office of Regulatory Staff Requesting Rule to Show Cause to Quail Pointe Apartments, 460 E Blackstock Road, Spartanburg, South Carolina 29301 as to Why Quail Pointe Apartments Should Not Be Regulated as a Public Utility - Discuss this Matter with the Commission.

COMMISSION ACTION:

I have a motion addressing the Petition of the ORS for a Rule to Show Cause as to why Quail Pointe Apartments should not be regulated as a public utility. ORS filed its petition in June 2007, taking the position that the owner of Quail Pointe Apartments, Quail Pointe Apartments, LLC, should be regulated as a public utility because Quail Pointe is a submeterer of natural gas service supplied by Piedmont Natural Gas. I move that we find that the Commission has no jurisdiction by which to require that Quail Pointe procure a Certificate of Public Convenience and Necessity. This Commission has previously dealt with the issue of submetering in *In re Rule to Show Cause on Submeterers*, Docket No. 2001-485-WS, Order No. 2003-214 (2003). In that order, the Commission found that the apartment complex in question billed its tenants for water and sewer service on a not-for-profit, pass-through basis. The apartment complex did not have the characteristics of a public utility: it had no monopoly over any service area; it did not own a large, capital-intensive utility infrastructure; and it did not seek a guaranteed rate of return. Rather than furnishing or supplying water and sewer service, the apartment complex merely measured the flow of water or wastewater and billed according to measured usage. Similarly, in this case, Quail Pointe does not have the characteristics of a public utility. The evidence presented at the hearing indicates that Quail Pointe bills its tenants for natural gas service on a not-for-profit, pass-through basis. Further, the South Carolina Residential Landlord and Tenant Act, at South Carolina Code Section 27-40-630, provides remedies for tenants whose landlords negligently or willfully fail to provide essential services. Among those services included in the Act's definition of "essential services" is natural gas, where it is used for heat, hot water, or cooking. South Carolina Code Section 27-40-210(17). We certainly share ORS' and the witnesses' concerns about the past experiences in regard to the handling of gas billing and safety issues at the Apartments. However, I move that we find that the South Carolina Residential Landlord and Tenant Act provides appropriate protection and remedies for tenants as to their gas service, and that the Commission is without jurisdiction to regulate Quail Pointe Apartments.

PRESIDING: FlemingSESSION: RegularTIME: 2:30 p.m.

| | MOTION | YES | NO | OTHER |
|----------|--------------------------|-------------------------------------|--------------------------|-------|
| CLYBURN | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| FLEMING | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| HAMILTON | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |

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| HOWARD | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| MITCHELL | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| WHITFIELD | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| WRIGHT | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

RECORDED BY: